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MasterCard
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Via Electronic Mail

April 14, 2010

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1384

Dear Ms. Johnson:

MasterCard Worldwide ("MasterCard")[1] submits this comment letter in response to the proposed amendments to Regulation Z and its Official Staff Commentary ("Proposal") issued by the Board of Governors of the Federal Reserve System ("Board") to implement the penalty fee and account review provisions of the Credit CARD Act. MasterCard appreciates the opportunity to provide its comments on the Proposal.

In General

MasterCard continues to have concerns that the CARD Act and its implementation will harm consumers unnecessarily in the form of increased costs of credit and reduced credit availability. The Proposal implements admittedly difficult provisions of the new law, and in many places the Board takes an appropriate approach. We are concerned, however, that key provisions of the Proposal, especially as they relate to penalty fees, will further restrict card issuers' ability to price for risk adequately and appropriately.

[1] MasterCard Worldwide (NYSE: MA) advances global commerce by providing a critical link among financial institutions and millions of businesses, cardholders and merchants worldwide. Through the company's roles as a franchisor, processor and advisor, MasterCard develops and markets secure, convenient and rewarding payment solutions, seamlessly processes more than 16 billion payments each year, and provides industry-leading analysis and consulting services that drive business growth for its banking customers and merchants. With more than one billion cards issued through its family of brands, including MasterCard®, Maestro® and Cirrus®, MasterCard serves consumers and businesses in more than 210 countries and territories, and is a partner to 25,000 of the world's leading financial institutions. With more than 24 million acceptance locations worldwide, no payment card is more widely accepted than MasterCard. For more information go to www.mastercard.com.

Limitations on Penalty Fees

In General

The Proposal prohibits an issuer from imposing a fee for violating the terms or other requirements of a credit card account unless the issuer has determined that the dollar amount of the fee: (i) represents a reasonable proportion of the total costs incurred by the issuer as a result of that type of violation; or (ii) is reasonably necessary to deter that type of violation using an empirically derived, demonstrably and statistically sound model that reasonably estimates the effect of the amount of the fee on the frequency of violations.

Costs

The Proposal includes guidance to issuers regarding how to calculate the costs associated with a violation, and how to determine the appropriate penalty fee. We agree that the cost determination does not necessarily need to be based on costs as a result of a specific violation. Rather, the cost must represent a reasonable proportion of the costs incurred by the issuer as a result of that type of violation. We ask the Board to clarify, however, that an issuer may evaluate the costs, and set the fees, on a portfolio-by-portfolio basis as opposed to aggregating all costs across all of the issuer's portfolios and imposing a "one-size-fits-all" fee on all accounts. For example, the costs associated with late payments in one portfolio may be significantly different than those in another portfolio (*e.g.*, one portfolio may have a heavier emphasis on live, proactive customer service communications). The issuer should be permitted to isolate those costs within the specific portfolio.

The Board notes, however, that losses and associated costs (including the cost of holding reserves against potential losses) are *not* costs incurred by an issuer as a result of violations of account terms for purposes of the requirement. MasterCard strongly urges the Board to revise its position to allow a card issuer to factor in costs associated with losses in connection with the calculation of the late payment fee. There can be no question that a cardholder who pays late, even chronically late, imposes more risk—and therefore cost—on the card issuer than a cardholder who pays the bill on time. The card issuer should be permitted to recover this cost in the form of a late payment fee.

In the Supplementary Information, as part of its justification for prohibiting card issuers from taking the cardholder's risk into account when setting penalty fees, the Board notes that "it appears that most violations of the account terms do not actually result in losses." This is, of course, true. We were surprised to hear such a justification from the Board, however, because if the prerequisite to alter the pricing of an account is *some level of certainty* that the borrower is likely to cause a loss, card issuers would either need to set the cost of credit unnecessarily high for the vast majority of borrowers or not operate in a safe and sound manner. The question is not whether most people who behave in a certain manner are likely to result in a loss, but whether people who exhibit such behavior are *more* likely to result in a loss.

The Board also indicates that card issuers do not *currently* price for the risk of loss through penalty fees. MasterCard does not know whether this is necessarily a true statement, but even if the statement were true, that is no reason to *permanently* preclude issuers from pricing penalty fees for the risk of loss. As the Board is well aware, the CARD Act and recent revisions to Regulation Z make it much more difficult for a card issuer to price an account for risk. We think it unnecessary and unwise to further restrict an issuer's ability to price for risk, especially when not required by statute.

The Board also suggests that the pricing for risk should be more transparent and part of the "upfront rates" offered to a consumer, and therefore risk should not be considered when setting penalty fees. With respect to the transparency of credit card pricing, we believe the Board sells itself short. The recent revisions to Regulation Z will result in exceptionally transparent pricing, including as it relates to penalty fees.[2] Furthermore, to the extent such fees increase after account opening, consumers will receive a robust notice and opportunity to opt out of the increase. There is no lack of transparency in pricing. With respect to pricing risk into "upfront rates," we continue to respectfully disagree with the policy position that risk-based pricing should be curtailed, and cost of credit for the vast majority of consumers increased, to compensate for the risks imposed by a minority of cardholders.

Deterrence

As with the Board's guidance pertaining to cost recovery, we agree that the issuer's deterrence determination should not necessarily be based on what may deter a specific consumer with respect to a specific account. Rather, the issuer must determine that the dollar amount of a fee is reasonably necessary to deter the type of violation for which the fee is imposed.

Although the Board appears open to the concept of allowing card issuers to set penalty fee levels in a manner that deters certain behaviors, the Proposal makes it very difficult for an issuer to use this approach. According to the Commentary, the model used by the issuer to establish deterrence must reasonably estimate that, independent of other variables, the imposition of a lower fee amount would result in a substantial increase in the frequency of that type of violation. Furthermore, the parameterization of the model must be sufficiently flexible to allow for the identification of a lower fee level above which additional fee increases have no marginal effect on the frequency of violations. It is not clear whether the development of such a model is reasonably practical, much less whether an issuer would be able to collect sufficient data to develop such a model. We also note that the requirement to develop sophisticated models heavily dependent on large amounts of data, combined with the fact that the Proposal requires each issuer to make independent determinations regardless of industry trends, means that smaller issuers would have absolutely no opportunity to set penalty fees based on deterrence under the Proposal.

[2] Indeed, a penalty *fee* is as transparent as a penalty *APR*, the latter of which is still permissible for an issuer to charge in the event of an account violation.

MasterCard believes it would be much more appropriate and reasonable for an issuer to rely on a penalty fee calculated through use of broader industry data and modeling. For example, a company with modeling or other statistical expertise could reasonably demonstrate that consumers would be deterred by a fee of $X. The results could also be segmented, such as by noting that consumers above a certain credit risk score would be deterred by a fee of $Y, but consumers at or below such a score would be deterred by a fee of $Z.[3]

Reevaluation of Issuer's Determinations

Under the Proposal, an issuer would need to reevaluate its determinations with respect to cost and/or deterrence at least once every twelve months. Although this is a reasonable approach, it creates a circumstance where the issuer will be required to reduce fees (if the reevaluation indicates a reduction is warranted) but will have difficulty increasing fees due to consumers' ability to opt out of such increases under § 226.9. We believe the solution would be to retain the provision, but to permit the issuer to impose the higher fee without providing an opt-out opportunity to the consumer if the increased fee is solely as a result of the reevaluation of costs/deterrence. Absent such an exception, issuers will not be able to establish penalty fees in a manner that recovers costs or imposes sufficient deterrents, even if the issuer closes the account to new transactions as a result of the opt-out.

The Proposal requires an issuer to begin imposing the lower fee within 30 days after completing the reevaluation. We are concerned that this does not give issuers sufficient time to make the necessary adjustments. For example, such a change would appear to require the issuer to update and reprint its disclosures under §§ 226.5a and 226.6. We also note that many account-opening disclosures are made available through retail locations where it would be unreasonable to expect the issuer to reprint and replace the stock within 30 days of making the determination.[4] We therefore ask the Board to allow issuers additional time to make the necessary changes, such as 180 days. We also ask the Board to grant issuers the flexibility to retain an existing fee level if the "revised" fee is less than the existing fee, but within a certain tolerance of the existing fee. We do not believe an issuer should be required to incur significant costs to revise disclosures to reduce a penalty fee by $1, for example.[5]

We also note that it does not appear that an issuer (or, if our suggestion were adopted, a third party modeler) could engage in an honest reevaluation of the deterrence effect of penalty fees unless the issuer were permitted to impose penalty fees that exceed the previously determined amount to determine whether a higher penalty fee is justified. We ask the Board to provide this flexibility as part of a bona fide effort to comply with the reevaluation requirement.

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[3] The fact that the fee could vary should not deter the Board from permitting such variations since the Proposal itself would result in significant fee variations, sometimes from month-to-month on the same account for the same violation.

[4] These logistical difficulties are also relevant with respect to increasing the penalty fee, although there is no requirement to impose a higher penalty fee within a certain period of time after concluding that a higher fee is justified.

[5] Of course, these costs would relate solely to disclosures provided to new applicants and cardholders. There would be no requirement to notify existing customers of a reduced late payment fee. To the extent the Board believes the "renewal" disclosure could apply, we ask the Board to waive the requirement if the fee is reduced pursuant to the final rule—especially since the renewal disclosure would not include the reduced late fee.

Prohibited Fees

The Proposal prohibits an issuer from imposing a penalty fee that exceeds the dollar amount associated with the violation at the time the fee is imposed. We do not think this prohibition is necessary, as the fee will never exceed the amount necessary for the issuer to recover its costs or to deter the consumer's behavior. Furthermore, the prohibition would result in the imposition of a fee that neither recovers costs nor deters behavior—calling into question the purpose of the fee altogether. For example, the Proposal may prohibit a fee in excess of $0.01 if the consumer makes a payment of $29.99 when the minimum required payment is $30. Indeed, the consumer could continue to make payments that are $0.01 less than the required amount, but the issuer would be prohibited from deterring such behavior in the form of a fee in excess of $0.01.[6] We admit the example is a bit extreme, but it is illustrative of the fact that, if the Proposal is adopted, issuers will face thousands, if not millions, of situations where they can neither recover their costs nor deter cardholders in the form of a penalty fee. Again, this will only result in increased costs for the majority of consumers who adhere to the terms of their account agreements.

With respect to over-limit fees, the Proposal appears to require the issuer to assess the fee on a day that the cardholder is actually over limit, and that the fee would be limited by the amount the cardholder is over limit on the day the fee is actually posted to the account. This would create arbitrary and unreasonable results. If a cardholder is over limit on day 10 in the cycle, but not over limit by day 25, there does not appear to be any reason to allow the issuer to impose the fee on day 10 in the cycle but prohibit the assessment of the same fee for the same violation at the end of the cycle (when most fees are currently assessed). Not only would this require needless reprogramming, but it will require the issuer to assess the fee earlier in the billing cycle, resulting in unnecessary additional finance charges if the cardholder is revolving the balance—with absolutely no consumer benefit. We also note that the day-to-day ledger balance does not necessarily give an issuer sufficient information to determine with certainty whether an account is over limit. Charges and payments may post on days other than when they occur, for example. An issuer generally must wait for the cycle to close and review the transactions posted to determine whether, at any time, the account actually went over limit.

MasterCard also notes that the dollar amount of a violation may not always be clear, either because of ambiguity in the Proposal or due to the circumstances. For example, if a consumer pays $20 of a $30 minimum payment, one reading of the Proposal would limit the penalty fee to $10, while another reasonable reading would cap the fee at $30 (assuming a $30 fee complied with other portions of the rule). We ask for clarity on this point. Regardless of this ambiguity, there are circumstances in which the dollar value of the violation is not necessarily clear. For example, what if a consumer bounces a check in a period where no payment is due (*e.g.*, cardholder is building a credit balance)? What if the cardholder misses a minimum payment of $30, and a $40 payment is received in the next billing cycle when the minimum payment is now $60? What is the dollar amount of a violation when an access check is returned?

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[6] We believe the consumer would rather be deterred through a higher fee than finding out after the fact that such behavior wrecked his or her credit history.

The Board would also prohibit an issuer from imposing a penalty fee when there is no dollar amount associated with the violation. The Proposal then states that there are no dollar amounts associated with declined authorizations, account inactivity, or account closure. We note at the outset that none of the three examples provided by the Board are actual omissions or violations of account terms, and therefore the regulation of that conduct would fall outside Section 149 of TILA. MasterCard is also concerned that the Proposal calls into question whether other fees that clearly are not for violations of the agreement are somehow regulated by the Proposal. For example, if a fee for account *inactivity* is regulated by the Proposal, is a fee for account *activity* (*e.g.*, a transaction fee) regulated by the Proposal? Are fees for ancillary services regulated by the Proposal?

Not only are the fees prohibited by the Board not penalty fees, but we believe it is unwise to prohibit such fees. For example, it costs an issuer money to carry an account. If the consumer uses the account, the issuer earns revenue through interchange which partially offset the costs incurred by the issuer. If the consumer does not use the account, the issuer does not have the ability to recover any of its costs absent an annual or other periodic fee. Furthermore, it is perfectly legitimate to allow an issuer to charge a fee for inactivity to incent the consumer to use the account. The converse is also true—an issuer should be permitted to waive a periodic account fee if the consumer uses the account.[7] We see absolutely no reason why a properly disclosed periodic fee cannot be charged or waived based on account usage.

The Proposal would also prohibit imposing more than one penalty fee based on a single event or transaction, although there is a safe harbor that would allow an issuer to impose a single penalty fee during a billing cycle. It is not clear why an issuer should be permitted to recover its costs or deter poor behavior if the consumer engages in only one proscribed activity, but that an issuer must swallow the costs and not deter the consumer if the consumer commits a second violation. In fact, it seems logical that the issuer should be able to recover the costs associated with each violation, or to deter each violation, even if they relate to the same transaction. For example, if a consumer makes a late payment with a bad check, the Proposal would allow the consumer to avoid a penalty for one of the violations, even though they are clearly independent of each other (*i.e.*, the late payment did not cause the check to be returned, nor did the returned check result in the late payment). There are simply no equitable arguments as to why the issuer, and not the cardholder, should absorb the additional costs resulting from the consumer's decision to make a late payment with a bad check.

Regardless of the policy arguments, issuers report that it would be extremely difficult to build systems logic that would be able to recognize when two violations are associated with one another. We understand that the Board has provided a safe harbor of "one fee per month" as an alternative, but we believe that is deficient for the same reasons we believe the "one fee per transaction" is deficient, if not more so. A consumer could engage in multiple violations in a given month, but the safe harbor would essentially eliminate the ability of the issuer to recover costs or deter more than the first violation in the form of a fee.

[7] As drafted, it is not clear whether the Proposal would prohibit the waiver of a periodic fee if the consumer uses the account, or engages in a certain level of transactions with the account.

Fee Safe Harbor

The Proposal includes a safe harbor relating to the amount of a penalty fee. Except as specifically prohibited (*e.g.*, inactivity fee, a fee exceeding the dollar amount associated with the violation), an issuer would comply with the requirement in § 226.52(b)(1) if the dollar amount of a penalty fee does not exceed the greater of: (i) a fee amount yet to be determined by the Board; or (ii) 5% of the dollar amount associated with the violation but not to exceed an amount yet to be determined by the Board. The fee amounts would be adjusted for inflation.

MasterCard does not offer comment on what the safe harbor fee amount should be. We believe it should be sufficient such that it acts as a true deterrent to consumers while also compensating issuers for the costs (including risks) of consumers' behavior. Although we expect that many issuers (especially smaller ones) will rely on the safe harbor, we believe that some issuers may deviate from the safe harbor, especially if the safe harbor amount is unreasonably low. We ask the Board to make clear in the final rule that the safe harbor is not a *de facto* requirement, and that an issuer may deviate from the safe harbor so long as the issuer is complying with the other requirements of the rule.

The Board specifically asks for comment as to whether it should craft the safe harbor to permit issuers to base penalty fees on consumer conduct, such as by tiering the dollar amount of penalty fees based on the number of times a consumer engages in a particular violation (*e.g.*, an increased fee for a second violation in a year) or by imposing fees in increments based on the consumer's conduct (*e.g.*, $5 late fee for each day the payment is late). We believe that the safe harbor should be flexible for card issuers, especially smaller ones. A larger issuer may be able to develop a fee structure based on deterrence, for example, that includes tiering or incremental fees. We doubt a smaller issuer would be able to do that, but should be offered the same opportunity to deter unsafe consumer behavior. Therefore, MasterCard would support alternative safe harbors such as those suggested by the Board.

Six-Month Lookback

In General

If an issuer increases the APR on a credit card account based on any "factors," and such increase triggers a CIT or penalty notice, the issuer is required to: (i) evaluate, at least every six months, whether such factors have changed; and (ii) based on the evaluation, reduce the APR as appropriate. An issuer must have reasonable policies and procedures to review the factors. An issuer is not required to review the same factors on which the increased APR was based. The issuer may, at its option, review the factors it currently considers when determining the APR applicable to its credit card accounts. If an APR reduction is required, the issuer must reduce the APR not later than 30 days after the evaluation.

Generally speaking, we believe the Board has proposed a reasonable approach to a statutory provision that is difficult to implement (and with which it will be difficult to comply). When considering comments on this provision, we ask the Board to keep in mind that the statutory provision operates from the false premise that consumers do not receive APR decreases as a result of risk-based pricing, competition, or other factors. To the extent an issuer is truly mispricing the APR, there are plenty of opportunities for the consumer to find a new credit card that is more appropriately priced. In other words, the Proposal is but one of many tools that will protect consumers against increased APRs that are mismatched to consumers' true risk. We believe this fact gives the Board the ability to provide issuers with reasonable flexibility when implementing the provision.

Decreasing APRs

The Board states that if an APR reduction is required, the issuer is not necessarily required to decrease the APR to the APR that was in effect prior to the APR increase. We agree with this approach, and urge the Board to retain it. We also ask the Board to state explicitly that an issuer is not expected to create new APR "buckets" for purposes of complying with the rule. Rather, the review is based on the issuer's current pricing schedule and the review should not result in issuers having to create new APRs for accounts based on the review. For example, it may be that the issuer's "base" APR is 12%, but has a penalty APR of 24% and a partial cure APR of 18%. It may be that the cardholder with a penalty rate of 24% does not yet qualify for the partial cure rate of 18%, but under some theoretical risk evaluation could qualify for a 20% APR if the issuer offered it. Although the review may support an APR of less than 24%, but more than 18%, the issuer should not be required to create some type of midpoint APR for purposes of complying with the rule.

The Proposal requires the issuer to decrease the APR not later than 30 days after completion of the evaluation. We agree that the required decrease should occur in a timely manner. However, it is our understanding that some issuers may have difficulty meeting this timeline, especially if the reduction involves a large number of accounts (*e.g.*, a rate reduction affecting many accounts due to a falling interest rate environment). We therefore ask the Board to provide issuers the ability to reduce the APR not later than 90 days after the evaluation is complete. We also ask that the issuer be permitted to implement the change on the first day of the billing cycle beginning after the 30-day (or 90-day) timeframe.

Alternative Review Methodologies

MasterCard believes it is important to give issuers the ability to either consider the factors that led to the repricing or to evaluate the cardholder based on the issuer's current scorecard. This flexibility is critical, as it would be difficult for the issuer to isolate a specific factor over several years, especially if that "factor" is no longer quantifiable (*e.g.*, business decision based on competition in the marketplace). We therefore urge the Board to retain the flexibility it has provided relating to the use of the issuer's current scorecard.

We also ask the Board to clarify that when an issuer reviews the factors the issuer currently considers (instead of the factors that led to the increased APR), the issuer may review the current factors as they apply to similarly situated cardholders. For example, an issuer may have one scorecard for applicants for a particular card and one scorecard for account reviews of existing cardholders who already hold that card. We believe the Board intends to allow card issuers to use the account review scorecard, and we ask the Board to provide the appropriate clarification.

Multiple Product Lines

The Proposal states that if an issuer uses different factors in determining the APR for different types of accounts, the issuer must review those factors that it uses in determining the APR for the consumer's specific type of account. MasterCard agrees that this is appropriate. The Proposal also states, however, that an issuer must review the same factors for accounts with similar features that are offered for similar purposes, and may not consider different factors for each of its individual accounts. We urge the Board to delete this portion of the Proposal. If an issuer offers a variety of general purpose credit cards, for example, the underwriting criteria may vary greatly across the portfolios depending on the specific circumstances (*e.g.*, a gold card with rewards may have very different underwriting "factors" to consider than a similar rewards co-brand card offered with a retailer). The issuer should not be arbitrarily locked into using the same factors across those different portfolios simply because they are all general purpose cards with no annual fee. We believe it is sufficient to require an issuer to have reasonable policies and procedures to review the relevant factors to ensure that any such policies and procedures are, in fact, reasonable both within a single portfolio and across multiple portfolios.

Termination of Obligation

The obligation to review factors ceases to apply if: (i) the issuer reduces the APR to the APR applicable immediately prior to the increase; or (ii) the issuer reduces the APR to an APR that is lower than the APR applicable immediately prior to the increase. This approach is appropriate, and we urge the Board to retain it.

The Board asks for comment on whether the obligation to review the factors should terminate after a specific time period. MasterCard strongly urges the Board to impose a two-year time limit on these mandated account reviews. We believe that such an approach appropriately balances the need to reevaluate factors for purposes of reducing an APR with the burdens associated with a requirement to re-underwrite an account periodically. As we noted above, the six-month lookback provisions are not the only consumer protections against unjustified APRs—they are not even the best protections. While there may be some utility to the provision shortly after the APR is increased, we believe that asking an issuer to re-underwrite an account pursuant to the requirements of the Proposal 5, 10, or even 20 years after an APR increase is not warranted.

Variable APR Modifications

MasterCard asks the Board to clarify that the requirement to review the account will not apply with respect to accounts that may have received a CIT notice due to modifications to variable APRs resulting from the recent revisions to Regulation Z (*e.g.*, relating to the removal of "floors"). These were not APR increases, and therefore should not be subject to the new requirement, but we ask the Board for clarification.

Revisions to Disclosure Requirements

Regulation Z, as recently amended, states that any fee or percentage amounts for late payment, returned payment, and over-limit fees in the tabular disclosures provided under §§ 226.5a and 226.6 must be disclosed in bold text, except bold text is not used for maximum limits on fee amounts unless the fee varies by state. The Proposal requires that the issuer use bold text when disclosing maximum limits on fees.

A review of the model forms in the Proposal indicates that the Board intends issuers to disclose the penalty fees using the phrase "up to $XX." The "up to" phrase is likely new for most issuers, and it will require programming changes. We understand that the Board would expect issuers to make these changes by August 22, 2010, but we also ask the Board to allow issuers to provide the revised disclosures with the "up to" language prior to August 22, 2010. This will ensure that issuers are not put in the impossible position of switching out stock at every location exactly on August 22, 2010. We recognize that this may result in some disclosures provided prior to August 22, 2010 stating that the late fee, for example, may be "up to $39" even though, effective August 22, 2010, the maximum late fee may be lower. Such an outcome would not be a disclosure violation, however, and issuers will still need to ensure that disclosures are accurate at the time they are provided.[8]

Similar to our request above relating to updating disclosures if a penalty fee decreases as a result of a reevaluation of fees, we ask that issuers have sufficient time to comply with the new application/solicitation and account opening disclosure requirements as a result of the initial implementation of the final rule. We do not believe that an issuer should be required to replace existing disclosure stock, such as at the point of sale, on short notice as a result of the final rule. Rather, so long as the issuer does not charge a penalty fee in excess of what is disclosed in the tables, an issuer should be permitted to rely on existing disclosures for 180 days after publication of the final rule. If the Board adopts this transition guidance, consumers will not be materially harmed and issuers will have every competitive incentive to update their disclosures in a timely manner to reflect the almost-certain lower penalty fees that will result from the final rule.

CIT and Penalty Notices

The Proposal requires an issuer to disclose in its CIT and penalty notices no more than four principal reasons for the APR increase, listed in their order of importance. There is no minimum number of reasons that must be disclosed. Given the requirement in the statute, we believe the Proposal is appropriate and we urge the Board to retain it.

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[8] To the extent the Board would not normally deem a disclosure of "up to $39" as accurate when there is a single late fee of $39, we ask the Board to provide transition guidance to deem such a disclosure as compliant.

Again, MasterCard appreciates the opportunity to provide comments on the Proposal. If you have any questions regarding our comments, please do not hesitate to call me at (914) 249-5978 or our counsels at Sidley Austin LLP in this matter, Michael F. McEneney at (202) 736-8368 or Karl F. Kaufmann at (202) 736-8133.

Sincerely,

Jodi Golinsky

Jodi Golinsky
Vice President
Regulatory and Public Policy Counsel

cc: Michael F. McEneney, Esq.
Karl F. Kaufmann, Esq.